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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Freddie Gene Cruz,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.  
14

No. CV-19-05194-PHX-DJH

**ORDER**

15 Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge  
16 Michael T. Morrissey (Doc. 31) regarding Petitioner Freddie Gene Cruz’s Petition for Writ  
17 of Habeas Corpus (“Petition”), filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R  
18 found that Petitioner’s claims were not cognizable on habeas review and were otherwise  
19 non-meritorious. (Doc. 31 at 14). It further found that an evidentiary hearing was  
20 unnecessary and recommends that the Petition be denied and dismissed with prejudice, and  
21 that no certificate of appealability be issued. (*Id.*) The Magistrate Judge advised the parties  
22 that they had fourteen days from the date of service of a copy of the R&R to file specific  
23 written objections with the Court, and fourteen days within which to file responses to any  
24 objections. (*Id.*) Petitioner filed an objection to the R&R on February 9, 2021 (Doc. 34),  
25 and Respondents filed their response to the objection on February 19, 2021 (Doc. 35).

26 **I. The Petition and R&R**

27 Petitioner raises four grounds of relief in his Petition. In Grounds 1–3, Petitioner  
28 alleges Fourth Amendment violations, and in Ground 4, Petitioner alleges he received

1 ineffective assistance of counsel when his trial attorney failed to obtain an evidentiary  
 2 hearing on a motion to suppress. After a thorough review of the state court record, the  
 3 Magistrate Judge found that Petitioner had been afforded a full and fair opportunity to  
 4 litigate his Fourth Amendment claims in state court and recommends denying federal  
 5 habeas relief for Grounds 1–3. (Doc. 31). The Magistrate Judge further recommends  
 6 denying relief for Petitioner’s Sixth Amendment claim because Petitioner would not be  
 7 able to demonstrate that had trial counsel obtained a pre-trial evidentiary hearing, the result  
 8 of his trial would have been different. (*Id.*)

## 9 **II. Standard of Review**

10 This Court must “make a *de novo* determination of those portions of the report or  
 11 specified proposed findings or recommendations to which” a party objects. 28 U.S.C.  
 12 § 636(b)(1)(C); *see also* Fed.R.Civ.P. 72(b)(3) (“The district judge must determine *de novo*  
 13 any part of the magistrate judge’s disposition that has been properly objected to.”); *United*  
 14 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (same). This Court “may  
 15 accept, reject, or modify, in whole or in part, the findings or recommendations made by the  
 16 magistrate judge.” 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P. 72(b)(3).

## 17 **III. Objections**

### 18 **A. Petitioner’s Fourth Amendment Claims (Grounds 1–3)**

19 “A Fourth Amendment claim is not cognizable in federal habeas proceedings if a  
 20 petitioner has had a full and fair opportunity to litigate the claim in state court. *Ortiz-*  
 21 *Sandoval v. Gomez*, 81 F.3d 891, 899 (9th Cir. 1996). In his objection, Petitioner argues  
 22 that he “never had a full and fair opportunity to litigate [his] Fourth Amendment issue  
 23 before seeking federal habeas relief.” (Doc. 34 at 2). The record and the R&R show  
 24 otherwise. The R&R clearly describes the extensive evidentiary hearing Petitioner was  
 25 afforded on his Fourth Amendment issues in his post-conviction proceedings. (Doc. 31 at  
 26 11). Petitioner did not prevail in that hearing, but had he done so, he would have been  
 27 entitled to a new trial that excluded the contested evidence. Petitioner clearly takes issue  
 28 with the conclusions reached by the PCR court following the evidentiary hearing, but that

1 is not the relevant inquiry for a federal court on habeas review. *See Newman v. Wengler*,  
 2 790 F.3d 876, 880 (9th Cir. 2015) (stating that “[t]he relevant inquiry is whether petitioner  
 3 had the opportunity to litigate his claim, not whether he did in fact do so or even whether  
 4 the claim was correctly decided”) (quoting *Ortiz-Sandoval*, 81 F.3d at 899). Because  
 5 Petitioner had a full and fair opportunity to litigate his Fourth Amendment claims in state  
 6 court, the Magistrate Judge did not err in finding that Petitioner’s Fourth Amendment  
 7 claims in Ground 1–3 are not cognizable on habeas review. Petitioner’s objection and  
 8 arguments regarding the merits of his Fourth Amendment claims are thus overruled.

9 **B. Petitioner’s Sixth Amendment Claim (Ground 4)**

10 Petitioner’s generalized objection to the Magistrate Judge’s conclusion that  
 11 Petitioner could not establish prejudice as a result of assumed deficient performance by his  
 12 trial counsel precludes *de novo* review of this claim. Petitioner’s objection regarding  
 13 Ground 4 simply states, contrary to the findings in the R&R, that “[i]t is clear from the  
 14 record that my counsel’s performance was deficient and caused prejudice to my defense.”  
 15 (Doc. 34 at 3). Petitioner does not articulate which findings in the R&R he takes issue with,  
 16 or why. Where objections fail to identify a flaw in the R&R’s analysis, they have the same  
 17 effect as would a complete failure to object. *Warling v. Ryan*, 2013 WL 5276367 at \*2 (D.  
 18 Ariz. Sept. 19, 2013) (stating that “[b]ecause *de novo* review of an entire R&R would defeat  
 19 the efficiencies intended by Congress, a general objection “has the same effect as would a  
 20 failure to object”). In light of the foregoing, the Court has no obligation to review  
 21 Petitioner’s general objections to Ground 4 of the R&R. *Id.*

22 Although the Court could simply accept the Magistrate Judge’s recommendation on  
 23 Ground 4 based upon this case law, it did not. The Court reviewed the Magistrate Judge’s  
 24 prejudice findings as well as the applicable law, and is left with the firm conviction that  
 25 the Magistrate Judge’s recommendation is well taken and supported by a correct  
 26 application of the law. Petitioner’s general objection regarding Ground 4 is thus also  
 27 overruled.

28 ...

1 Accordingly,


2 **IT IS ORDERED** that Magistrate Judge Morrissey's Report and Recommendation  
3 (Doc. 31) is **ACCEPTED** and **ADOPTED** as the Order of this Court.

4 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus pursuant  
5 to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** and **DISMISSED WITH PREJUDICE**.

6 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
7 Section 2254 Cases, a Certificate of Appealability and leave to proceed in forma pauperis  
8 on appeal are **DENIED** because dismissal of the Petitioner is justified by a plain procedural  
9 bar and reasonable jurists would not find the ruling debatable, and because Petitioner has  
10 not made a substantial showing of a denial of a constitutional right.

11 **IT IS FINALLY ORDERED** that the Clerk of the Court shall terminate this action  
12 and enter judgment accordingly.

13 Dated this 4th day of April, 2022.

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15   
16 Honorable Diane J. Humetewa  
17 United States District Judge  
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